

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ELIZABETH CHISOLM

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:10-cv-148-DCB-MTP

ERGON REFINING, INC.

DEFENDANT

ORDER GRANTING MOTION TO STAY AND
ORDERING PLAINTIFF TO SHOW CAUSE

Plaintiff Elizabeth Chisolm filed suit against Defendant Ergon Refining, Inc., in Warren County Circuit Court on November 12, 2009. Ergon removed the suit to this Court on September 8, 2010 and subsequently moved to dismiss the Complaint for failure of service of process. Ergon has also filed a motion to set aside the state court's order granting Chisolm an extension of time to effect service. Chisolm has not responded to either motion and the time to respond under the Local Rules has passed.

Ergon has now filed a Motion to Stay the case pending resolution of the Motion to Dismiss and Motion to Set Aside [docket entry no. 13], arguing that the Motions may be dispositive and that staying the case pending their resolution will avoid potentially unnecessary time and expense on discovery. "The Fifth Circuit has recognized that a stay of discovery is appropriate where a preliminary motion asking for dismissal of the case is pending because: (1) such motions are decided based on the content of the complaint only, without regard to facts obtained during discovery; and (2) the motion, if granted would dispose of the case, thus

avoiding the effort and expense of discovery." Dowdy & Dowdy Partnership v. Arbitron, Inc., 2010 WL 3893915, *1 (S.D. Miss. Sept. 30, 2010)(citing Landry v. Air Line Pilots Ass'n Int'l AFL-CIO, 901 F.2d 404, 435-36 (5th Cir. 1990)). Here, there is no question that the pending Motions may be dispositive. Moreover, it does not appear that the Plaintiff, Chisolm, will be prejudiced by the stay given that she has not responded to the Motion to Stay or any of Ergon's previous Motions. Accordingly,

IT IS HEREBY ORDERED that the Motion to Stay is **GRANTED**. This cause is stayed pending resolution of the Motion to Dismiss [docket entry no. 7] and Motion to Set Aside [docket entry no. 9].

IT IS FURTHER ORDERED that the Plaintiff, Elizabeth Chisolm, show cause why the Motion to Dismiss and Motion to Set Aside should not be granted.

SO ORDERED, this the 28th day of April, 2011.

s/ David Bramlette

UNITED STATES DISTRICT JUDGE